

1. Rebuttable Presumption for CFC Contaminated Used Oil

EPA presumes used oil containing more than 1,000 ppm total halogens is a hazardous waste because it has been mixed with a listed halogenated hazardous waste. Used oil generators may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (279.10(b)(1)(ii)). The rebuttable presumption, however, does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units when the CFCs in the used oil are “destined for reclamation” (279.10(b)(1)(ii)(B)). At what point does this exemption from the rebuttable presumption apply at the point of draining from the unit or only once the CFCs in the used oil have actually been reclaimed? Additionally, would a generator or handler reclaiming the CFCs from the used oil be considered a processor, subject to the standards for used oil processors and re-refiners in Part 279, Subpart F?

A generator handling CFC contaminated used oil is exempt from the rebuttable presumption at the point of draining, as long as the CFCs are eventually reclaimed from the used oil to the fullest extent possible, and the used oil has not been mixed with other wastes or with used oil from other sources (57 FR 41580; September 10, 1992). Although the rebuttable presumption does not apply, these used oils remain subject to appropriate Part 279 standards.

In the event the CFCs are not reclaimed, the rebuttable presumption would have applied at the point of draining from the unit. If the presence of CFCs in compressor oils removed from refrigeration units cause the used oils to exceed the 1,000 ppm halogen limit, the oil must be managed as a hazardous waste unless the presumption of hazardous waste mixing is successfully rebutted.

On-site CFC reclamation by a used oil generator does not necessarily subject the generator to the standards for used oil processors. Used oil processing, as defined in 279.1, involves producing (or making used oil more amenable for the production of) fuel oils, lubricants or other used oil-derived products. However, 279.20(b)(2)(ii)(A) provides that generators who filter, clean, or otherwise recondition used oil before returning it for reuse by the generator are not processors if the used oil is generated on-site and is not being sent off-site to a burner of used oil. Furthermore, the used oil/CFC separation process is generally not designed to make the used oil more amenable for the production of used oil derived product. Likewise, off-site used oil/CFC separation by a used oil handler does not necessarily subject the handler to the standards for used oil processors. Rather, a handler storing used oil on site for greater than 24 hours

but less than 35 days is regulated as a transfer facility. Only a handler storing the used oil on site for greater than 35 days would become subject to the processor requirements (279.45(a)). This is true for any transfer facility storing used oil for more than 35 days, regardless of whether the facility is engaged in CFC reclamation.